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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

STEPHEN BLUM,

Petitioner,

v.

THE SUPERIOR COURT OF
LOS ANGELES COUNTY,

Respondent;

HITOMI BLUMBERG, LLC,

Real Party in Interest.

No. B208357

(Super. Ct. No. BC 373183)
(Mary Thornton House, Judge)

ORIGINAL PROCEEDINGS; application for a writ of mandate. Order to show cause issued. Mary Thornton House, Judge. Petition for writ of mandate granted.

Holland & Knight, Alan J. Watson and Shelley G. Hurwitz for Petitioner.

No appearance for Respondent.

Todd, Ferentz, Schwarcz & Rimberg and David R. Schwarcz for Real Party in Interest.

Hitomi Blumberg, LLC¹ sued Stephen Blum and American HomeHealth, Inc. (AHH) related to the sale of shares of AHH to Blumberg LLC. Blum moved to quash service of the summons and complaint for lack of personal jurisdiction. The court found Blum had sufficient contacts with California for it to exercise jurisdiction over him because he was a director of AHH and AHH sold products to retailers which had stores in all 50 states. We conclude Blum did not have minimum contacts with California and grant the petition for a writ of mandate directing the superior court to enter an order quashing the service of summons and complaint on Blum.

FACTUAL AND PROCEDURAL SYNOPSIS

AHH was a start-up company that developed a retail line of household cleaner and personal care infection control products. AHH was incorporated in Delaware and established its principal place of business in St. Petersburg, Florida. Blum was a member of AHH's board of directors at formation; he was not an officer or employee. After its formation, AHH raised money mostly through private sales of its stock.

The unverified complaint contained causes of action for breach of contract, breach of fiduciary duty, fraud in the inducement, violation of the Corporations Code, and negligent misrepresentation. The complaint alleged that Hitomi Blumberg, after several meetings with AHH officers, invested \$180,000 through Blumberg LLC to acquire approximately 51,428 shares of AHH common stock. The complaint alleged Blumberg LLC had been fraudulently induced to purchase stock in AHH because Blum represented that AHH had many orders for its retail line and that AHH was financially sound and would be bought by a big private equity firm.

The complaint alleged, upon information and belief, that AHH did "business in the County of Los Angeles" and that Blum "conducted business on behalf of AHH in Los Angeles County."

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Blumberg LLC refers to the corporation, and Blumberg refers to the individual.

The complaint did not allege that Blumberg or Blumberg LLC negotiated or contracted to purchase the AHH stock in California or that AHH or Blum solicited the purchase of AHH stock or made any of the alleged misrepresentations in California.

In late 2007, the clerk of the court entered defaults against AHH and Blum for failing to respond to the complaint in a timely manner. On Blum's motion, the court set aside his default, finding the failure to respond was due to excusable neglect.

Blum also moved to quash service of the summons and complaint. In May 2008, the court held a hearing on the motion. The court's tentative ruling was to deny the motion as untimely. Blum's counsel explained the time to file a motion to quash restarts where, as here, a default is set aside.

In a declaration filed in support of entry of default, Blumberg claimed that after several meetings with AHH officers, Blumberg LLC purchased the AHH stock, but she did not claim those meetings took place in California. In his declaration accompanying the motion to quash, Blum testified the meetings between Blumberg and AHH took place in New York and Florida.

Blum traveled to California on one occasion in his capacity as a director of AHH. The purpose of that trip was to meet with a company that licensed certain products to AHH. Blum did not sign any contracts or enter into any agreements on that trip. Other than that single meeting, Blum did not attend to any other AHH business in California. The meeting took place before Blum had been introduced to Blumberg.

On May 23, the court issued a ruling denying the motion to quash and concluding Blum has sufficient contacts with California to permit the exercise of personal jurisdiction, stating: "Mr. Blum's own declaration and exhibit A to the complaint [the subscription agreement] provide sufficient minimum contacts to confer jurisdiction. Mr. Blum agrees that he was once a member of the board of directors for AHH and that AHH entered into an agreement with plaintiff to distribute AHH products that are sold to major chains, such as Target. . . . The terms of the offering embodied in Exhibit A to the complaint [state] on page 17 that the products are sold in 5000 stores in 50 states." (Citations omitted.)

Blum filed a timely petition for writ of mandate from the court's denial of its motion to quash.

DISCUSSION

Blum contends the court erred when it found he had sufficient minimum contacts with California for it to exercise personal jurisdiction over him. Blum argues that he had no contacts with California in his individual capacity; AHH's contacts cannot be imputed to him; and even if they could be imputed to him, AHH's contacts are not sufficiently systematic and continuous to support general jurisdiction. Blumberg LLC argues the court did not rely on imputing AHH's contacts to assert personal jurisdiction over Blum; because it is organized under California law, Blum's business transaction with it established minimum contacts, and the effects test supported jurisdiction over Blum as he purposefully availed himself of the benefits and protections of California law.

"California's long-arm statute permits a court to exercise personal jurisdiction over a nonresident defendant to the full extent permitted by the due process clause of the United States Constitution. (Code Civ. Proc., § 410.10.) Jurisdiction may be exercised on any basis not inconsistent with the federal or state Constitution. In order to satisfy due process requirements, the defendant must have 'minimum contacts' with the forum state such that the maintenance of the suit 'does not offend [the] "traditional notions of fair play and substantial justice."' Minimum contacts exist where the defendant's conduct in the forum state is such that he should reasonably anticipate being subject to suit there, and it is reasonable and fair to force him to do so. In contrast, contacts that are random, fortuitous, or attenuated do not rise to the minimum level, and general jurisdiction cannot be exercised under these circumstances." (Citations omitted.) (*F. Hoffman-La Roche, Ltd. v. Superior Court* (2005) 130 Cal.App.4th 782, 795.)

I. Standard of Review

"When a nonresident defendant challenges personal jurisdiction, the plaintiff must prove, by a preponderance of the evidence, the factual basis that would justify the

exercise of jurisdiction. If the plaintiff meets this burden, it is then up to the defendant to show that the exercise of jurisdiction would be unreasonable. In this analysis, the merits of the complaint are not implicated. [¶] On review, the question of jurisdiction is, in essence, one of law. That said, when the facts giving rise to jurisdiction are conflicting, the trial court's factual determinations are reviewed for substantial evidence. Even then, we review independently the trial court's conclusions as to the legal significance of the facts. When the jurisdictional facts are not in dispute, whether the defendant is subject to personal jurisdiction is purely a legal question that we review de novo. Thus . . . the ultimate question whether jurisdiction is fair and reasonable under all the circumstances, based on the undisputed facts and those resolved by the court in favor of the prevailing party, is a legal determination warranting independent review." (Citations omitted.) (*F. Hoffman-La Roche, Ltd. v. Superior Court*, *supra*, 130 Cal.App.4th at p. 794.)

"The plaintiff must "present facts demonstrating that the conduct of defendants related to the pleaded causes is such as to constitute constitutionally cognizable 'minimum contacts.'"" An unverified complaint has no evidentiary value in meeting the plaintiff's burden of proving minimum contacts" (Citations omitted.) (*Thomson v. Anderson* (2003) 113 Cal.App.4th 258, 266; see also *In re Automobile Antitrust Cases I & II* (2005) 135 Cal.App.4th 100, 110 ["The plaintiff must do more than merely allege jurisdictional facts. It must present evidence sufficient to justify a finding that California may properly exercise jurisdiction over the defendant. The plaintiff must provide affidavits and other authenticated documents in order to demonstrate competent evidence of jurisdictional facts. . . . Declarations cannot be mere vague assertions of ultimate facts, but must offer specific evidentiary facts permitting a court to form an independent conclusion on the issue of jurisdiction." (Citation omitted.)].)

In opposition to Blum's motion to quash, Blumberg LLC adduced no evidence relating to Blum's contacts with California; instead, it argued, without any evidentiary support, that all the parties did business in California and the stock offering was not limited to the geographic boundaries of New York State. In opposition to the motion to set aside the default, again without evidentiary support, Blumberg LLC claimed the stock

offering was made in California. On appeal, Blumberg LLC relies on its unverified complaint and Blum's declaration. Blumberg LLC's allegations that AHH did business in Los Angeles County and that Blum conducted business on behalf of AHH in Los Angeles County are without evidentiary value.

II. AHH's Contacts

A fair reading of the court's ruling is that it imputed AHH's contacts to Blum because he was a director of AHH and because AHH sold products to retailers such as Target which had stores in California.

It is axiomatic that: "Each defendant's contacts with the forum State must be assessed individually." (*Calder v. Jones* (1984) 465 U.S. 783, 790.) "[J]urisdiction over an employee does not automatically follow from jurisdiction over the corporation which employs him." (*Keeton v Hustler Magazine, Inc.* (1984) 465 U. S. 770, 781, fn. 13.) "For personal jurisdiction to lie, the character, quality, and nature of [an officer, shareholder, and employee's] activity must bear a substantial relationship to the causes of action beyond that derived solely from his official position with the corporation." (*Ruger v. Superior Court* (1981) 118 Cal.App.3d 427, 433.)

Blum's only contact with California was one trip as a director of AHH -- a trip the court found did not concern matters forming the basis of the complaint. That trip was at best tangentially related to sales of AHH products and bore no relationship to the complaint which alleged causes of action relating to the sale of shares of AHH stock. Blumberg LLC itself admits that its causes of action relate to the selling of securities, not to the sale of AHH's products. (*Gray Line Tours v. Reynolds Electrical & Engineering Co.* (1987) 193 Cal.App.3d 190, 193 ["[W]here the activity is less extensive, the cause of action 'must arise out of or be connected with the defendant's forum-related activity.'"].) Thus, that one contact was insufficient to establish minimum contacts.

III. Blum's Contacts

A. General Jurisdiction

It is undisputed that Blum had no substantial, continuous and systematic contacts with California in his individual capacity sufficient to confer general jurisdiction -- he was not served in California and had never lived, owned real property, maintained a bank account or paid taxes in California. (See *Shisler v. Sanfer Sports Cars, Inc.* (2006) 146 Cal.App.4th 1254, 1258-1259.)

B. Specific Jurisdiction

1. Purposeful Availment

“Even if a nonresident defendant’s contacts with the forum state are not substantial, continuous, and systematic so as to support general jurisdiction, a court may still exercise specific or limited jurisdiction. This results where 1) the defendant has purposefully availed himself of the privilege of conducting activities in California, thereby invoking the benefits and protections of its laws; 2) the claim arises out of the defendant’s California-related activity; and 3) the exercise of jurisdiction would be fair and reasonable and would comport with notions of fair play and substantial justice.” (*F. Hoffman-La Roche, Ltd. v. Superior Court, supra*, 130 Cal.App.4th at p. 796.)

“The purposeful availment inquiry . . . focuses on the defendant’s intentionality. This prong is only satisfied when the defendant purposefully and voluntarily directs his activities toward the forum so that he should expect, by virtue of the benefit he receives, to be subject to the court’s jurisdiction based on his contacts with the forum. Thus, the purposeful availment requirement ensures that a defendant will not be haled into a jurisdiction solely as a result of random, fortuitous, or attenuated contacts, or of the unilateral activity of another party or a third person. When a [defendant] purposefully avails itself of the privilege of conducting activities within the forum State, it has clear notice that it is subject to suit there, and can act to alleviate the risk of burdensome

litigation by procuring insurance, passing the expected costs on to customers, or, if the risks are too great, severing its connection with the State.” (Citations and internal quotation marks omitted.) (*Pavlovich v. Superior Court* (2002) 29 Cal.4th 262, 269.)

For the first time on appeal, Blumberg LLC argues Blum’s business transactions with it, because it is a California limited liability corporation, were sufficient to establish minimum contacts. Blumberg LLC reasons that since it is organized under California law, its existence is predicated on California law, and therefore any transaction which benefits any party is a derivative benefit procured by California law.

Blumberg LCC claims *Quattrone v. Superior Court* (1975) 44 Cal.App.3d 296 is on point as in that case a California corporation was fraudulently induced to offer shares of its stock. In *Quattrone*, the plaintiff, a California corporation, alleged that a defendant, who was a Pennsylvania resident, entered into a conspiracy to defraud the plaintiff by submitting falsified financial records relating to the operations of a Pennsylvania-based subsidiary of plaintiff. The defendant exchanged his stock in the Pennsylvania subsidiary for stock in the plaintiff. However, the issuance of the securities violated Corporations Code section 26104, a regulation designed in part to protect shareholders of California corporations. (*Id.*, at pp. 306-307.) The court held that by electing to participate in the stock program provided by an acquisition agreement, the defendant had invoked the benefits and protections of California law, which included the California Commissioner of Corporations’s finding the exchange plan was fair, just and equitable. (*Id.*, at pp. 307-309.)

The simple fact Blumberg LLC cannot function without California law does not mean that any nonresident who does business with it can be subject to California’s jurisdiction. (See *Sibley v. Superior Court* (1976) 16 Cal.3d 442, 448 [No jurisdiction where arms-length transaction not subject to special regulation in California or where California has not manifested an exceptional interest.]; *Hill v. Noble Drilling Corp.* (1976) 61 Cal.App.3d 258, 263 [The mere fact an out-of-state tort affected a Californian is not enough to enable a court to hold the tort had an effect in California.].) Blumberg

LLC points to no special regulation or special interest by California pertaining to the issuance of AHH's stock outside California.²

In sum, not only did Blum not purposefully avail himself of the privilege of conducting business in California, but also Blumberg LLC's claims did not arise out of Blum's California-related activity.

2. Effects Test

The effects test permits a forum state to exercise personal jurisdiction over an out-of-state defendant who committed an intentional tort in another state if (1) the brunt of the injury occurs in the forum state; (2) it was foreseeable that the defendant's conduct would cause harm in the forum state; and (3) the defendant expressly aimed its tortious conduct at the forum state. (*Pavlovich v. Superior Court, supra*, 29 Cal.4th at pp. 270-273.)

Blumberg LLC asserts that Blum's actions satisfied the effects test as he purposefully availed himself of the benefits and protections of California law by engaging in business transactions with a California company, making it foreseeable that any fraudulent conduct would cause injury in California irrespective of where the fraudulent conduct occurred. Blumberg LLC suggests it would offend notions of fair play if the court's jurisdiction over fraudulent activity intentionally directed at California residents could be precluded because the events took place outside California. (*Snowney v. Harrah's Entertainment, Inc.* (2005) 35 Cal.4th 1054, 1070.) In *Snowney*, Nevada hotels heavily advertised in California, obtained a significant percentage of their business from California residents, and maintained an Internet Web site and a toll-free phone number where visitors or callers might obtain room quotes and make reservations. (*Id.*, at p. 1059.) A California resident filed a class action because the Nevada hotels failed to

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The subscription agreement stated the exclusive forums to resolve disputes arising out of the agreement were the state and federal courts in Florida.

provide notice of an energy surcharge imposed on hotel guests. (*Ibid.*) The Court of Appeal determined that the hotels purposefully availed themselves of the privilege of doing business in California and the controversy related to their contacts with California. (*Id.*, at pp. 1062-1070.)

The difficulty with Blumberg LLC's assertion is that Blum adduced uncontroverted evidence he did not know Blumberg was a California resident and she told him she lived in New York. Thus, it was not foreseeable any harm would occur in California. Moreover, Blumberg LLC did not allege, much less adduce evidence, that the business AHH did in California was substantial. (See *Bridgestone Corp. v. Superior Court* (2002) 99 Cal.App.4th 767, 777.) In addition, Blumberg LLC adduced no evidence that the offering was directed at California or that the solicitation, negotiations or sale took place in California. Blumberg only attested to Blum's misrepresentations in the request to enter default. Blum attested to the fact the meetings he attended with Blumberg were in New York and Florida.

Accordingly, there was no evidence to support a finding Blum had sufficient minimum contacts for the court to assert jurisdiction.

DISPOSITION

Let a preemptory writ of mandate issue directing the superior court to reverse its order denying Blum's motion to quash service and to enter an order granting Blum's motion to quash service of the summons and complaint. Blum is awarded his costs in bringing this petition.

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We concur:

WOODS, J.

PERLUSS, P.J.

JACKSON, J.